

the real question is whether the economies of scale achievable through recovery of these costs over a larger customer base are sufficient to overcome the cost differences that exist among wire centers. The greater proportion of the economies of scale that are present in switch costs are achieved very rapidly and, once the CLP has gained a relatively small share of the market, acquisition of additional customers does not result in significant additional cost savings. This being the case, a CLP contemplating adding a collocation to a wire center where profitability is marginal or negative must balance the losses that it will incur by collocating in that wire center against the cost savings that it will achieve in its switch costs. A wire center that is losing two or three dollars per line per month will not be made to look profitable if the cost savings in switch costs are a few pennies per line per month.

Clearly, BellSouth's proposed market definition obscures important factors that influence a CLP's decision to provide service. If the Commission were to accept BellSouth's proposed market definition and non-impairment claims, wire centers that according to BellSouth's own earlier analysis, cannot be profitably served by CLPs would be found to be not impaired.

1 When BellSouth received authority to provide in-region long distance authority in
2 North Carolina, the only service delivery method by which CLPs were providing high
3 volume service to mass market customers was UNE-P. As the FCC found in the
4 *Triennial Review Order*, "the number of hot cuts performed by BOCs in connection with
5 the section 271 process is not comparable to the number that incumbent LECs would
6 need to perform if unbundled switching were not available for all customer locations
7 served with voice-grade loops." *Triennial Review Order*, ¶ 469. The flow-through that
8 might be acceptable for low volumes of UNE-L orders could cause impairment for mass
9 market volumes. And mechanization percentages on the order of what BellSouth is
10 providing, combined with its manual provisioning processes, almost certainly would give
11 rise to impairment for CLPs attempting to submit high volumes of UNE-L migration
12 orders.

13 There is really no dispute that manual processing is involved in most BellSouth
14 UNE-L migration orders. BellSouth's existing UNE-L processes currently handle low
15 volumes of orders. BellSouth's performance data is of limited value because CLPs are
16 not submitting large volumes of UNE-L orders. Moreover, the hot cut metrics BellSouth
17 refers to do not provide data on non-coordinated cutovers that MCI would use for
18 residential customers, and in any event only provide a small window into the overall
19 process, focusing on the hot cut itself and provisioning troubles within seven days after
20 the cutover. BellSouth has submitted evidence of a third-party test, done without the
21 involvement of CLPs or a public service commission, that evaluated aspects of
22 BellSouth's batch hot cut process, but involved only a few hundred orders submitted over
23 the course of four days in three central offices.

1 This case is not just about BellSouth's performance, but about all carriers' -- and
2 their customers' -- experience. Although BellSouth has participated in one workshop
3 process in Florida with respect to CSRs, its position generally is that its current UNE-L
4 processes are good enough and that CLPs should have the burden of identifying specific
5 problems and then requesting solutions through the change management process.
6 BellSouth stands alone as the only RBOC that has refused to undertake such a
7 collaborative process.

8

9

1 While BellSouth states that IDLC based loops will be unbundled, it side-
2 steps the shortcomings of its IDLC unbundling options, which include prolonged
3 installation intervals, increased costs and lower quality services. Even under the
4 most favorable circumstances, BellSouth's loop provisioning intervals are
5 substantially longer than the intervals CLPs and mass market customers currently
6 experience with UNE-P migrations. To make matters worse, BellSouth's IDLC
7 unbundling options may require special construction involving delays and the
8 assessment of additional charges. ILECs are required to "provide
9 nondiscriminatory access, on an unbundled basis, to an entire hybrid loop capable
10 of voice-grade service (i.e. equivalent to DS0 capacity)" in cases where
11 alternative copper facilities are not provided. Yet many customers would
12 experience degraded service quality, for example, with regard to dial-up modem
13 performance, when they are moved off of IDLC.

14 CLPs cannot fully ascertain the extent to which they will be able to utilize
15 EELs to support the mass market. Early indications are that the processes will not
16 be timely, seamless or cost effective. DS0 EELs are not currently provided to
17 CLPs in any significant volume and it is entirely unclear if, or when, CLPs will be
18 able to utilize EELs in order to support the mass market. BellSouth's batch hot
19 cut process does not include cuts to EELs, stating that "BellSouth has agreed to
20 include hot cuts to DS0 EELs in its batch and individual hot cut processes," with a
21 target implementation date of July 2004. It would appear that the ordering
22 process may be manual whereas the UNE-P migration process is mechanized. It
23 also appears that the process may require that multiple orders be placed to

1 provision a single customer onto a DS0 EEL facility and that more information
2 may be required to place such an order than would be required to place an order
3 for UNE-P based services.

4 While BellSouth asserts that it is committed to devoting the resources
5 necessary to continue to meet the intervals prescribed, if all impediments to UNE-
6 L competition were removed and all CLP demand for loops had to be supported
7 through collocation and EELs, then demand for collocation could increase
8 dramatically. Hence, it remains to be seen whether BellSouth's assertion will be
9 proven.

**UNITED STATES DEPARTMENT OF DEFENSE AND ALL
OTHER FEDERAL EXECUTIVE AGENCIES**

(Docket No. P-100, Sub 133q: TRO → UNE-P)

The NCUC is Providing the Rebuttal Matrix of Issues and Executive Summary for the
Following DOD Witness:

Harry Gildea – Rebuttal (2/16/04)

**UNITED STATES DEPARTMENT OF DEFENSE AND
ALL OTHER FEDERAL EXECUTIVE AGENCIES**

MATRIX SUMMARY OF POSITIONS

Docket No. P-100, Sub 133q

WITNESS	SUBJECT MATTER OF TESTIMONY	TRO DECISIONAL CRITERIA
Harry Gildea	Local circuit switching DSO capacity determinations	47 C.F.R. §51.319(d)(2)

BEFORE THE
STATE OF NORTH CAROLINA
UTILITIES COMMISSION

FILED
FEB 16 2004
Clerk's Office
N.C. Utilities Commission

In the Matter of

Triennial Review Order – UNE-P

Docket No. P-100, Sub 133q

SUMMARY OF THE REBUTTAL TESTIMONY
of
HARRY GILDEA

on behalf of

**THE UNITED STATES DEPARTMENT OF DEFENSE AND
ALL OTHER FEDERAL EXECUTIVE AGENCIES**

FEBRUARY 16, 2004

Federal installations, facilities and offices range widely in size, and are located throughout all of North Carolina. The business telecommunications services used by Federal Executive Agencies ("FEAs") at these places range from large complex systems to small office services. To maximize competition among providers of these vital systems and services, FEAs are concerned with procedures governing the availability of unbundled network elements ("UNEs") for both the "enterprise" and the "mass" markets.

In this rebuttal testimony, I address issues concerning the local circuit switching UNE raised in the FCC's *Triennial Review Order*. First, I discuss the description of the markets to be used in evaluating the need for the local circuit switching UNE. I believe that Bell South proposes an acceptable procedure for defining the markets to employed

for analyses of the conditions for "no impairment" under the self-provisioning trigger for this UNE. Secondly, I address claims by witnesses for BellSouth and competitive local exchange carriers concerning whether the self-provisioning trigger has been met in the two markets identified by BellSouth. I believe that Bell South has fallen short of the requirements so far. For more and better competition, I urge the Commission to ensure that BellSouth adheres rigorously to the bright line tests for "no impairment" established by the FCC.

AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC

(Docket No. P-100, Sub 133s: TRO → High Capacity Loop and Transport)

The NCUC is Providing the Rebuttal Executive Summary for the Following AT&T
Witness:

Jay M. Bradbury – Rebuttal (3/1/04)

ATT

North Carolina Docket P100 Sub 133s
Rebuttal Testimony Summary of Jay M. Bradbury

AT&T is not a wholesale provider of either high capacity loops or dedicated transport. AT&T is not a self-provider of dedicated transport. The high-capacity loops that AT&T self-provides all carry three or more DS3s of demand and, therefore, are not relevant as self-provisioning triggers under the prescribed actual deployment tests. As such, they provide no probative data for use in the prescribed potential deployment analysis.

BellSouth was aware of, but chose to ignore, the facts about AT&T's operations in North Carolina. BellSouth's conclusions that OCn facilities are the equivalent of DS3 and DS1 facilities, that dark fiber must exist because there is lit fiber, and that dedicated transport routes can include switching, are all incorrect. BellSouth has failed to provide the evidentiary demonstration required by the FCC in the TRO for relief of its obligations to provide high-capacity loops and dedicated transport as UNEs.

BELLSOUTH TELECOMMUNICATIONS, INC.

(Docket No. P-100, Sub 133s: TRO → High Capacity Loop and Transport)

The NCUC is Providing the Direct and Rebuttal Matrices of Issues and Executive Summaries for the Following BellSouth Witnesses:

Aniruddha (Andy) Banerjee, Ph.D. – Direct (2/16/04) & Rebuttal (3/1/04)

A. Wayne Gray - Direct (2/16/04)

Shelley W. Padgett - Direct (2/16/04) & Rebuttal (3/1/04)

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**BELLSOUTH TELECOMMUNICATIONS, INC.'S
MATRIX SUMMARY OF POSITIONS
DOCKET NO. P-100, SUB 133s**

TRIENNIAL REVIEW ORDER – HIGH CAPACITY LOOP AND TRANSPORT

WITNESS	SUBJECT MATTER OF TESTIMONY	TRO DECISIONAL CRITERIA
Dr. Aniruddha Banerjee	Potential deployment test	47 C.F. R. §51.319(a)(5)(ii) 47 C.F. R. §51.319(a)(6)(ii) 47 C.F. R. §51.319(e)(2)(ii) 47 C.F. R. §51.319(e)(3)(ii)
A. Wayne Gray	Network issues relating to loop/transport triggers test; Network issues and costs relating to potential deployment test	47 C.F. R. §51.319(a)(4)(ii) 47 C.F. R. §51.319(a)(5)(i)(A) and (B) 47 C.F. R. §51.319(a)(5)(ii) 47 C.F. R. §51.319(a)(6)(i) and (ii) 47 C.F. R. §51.319(e)(1)(ii) 47 C.F. R. §51.319(e)(2)(i)(A) and (B) 47 C.F. R. §51.319(e)(2)(ii) 47 C.F. R. §51.319(e)(3)(i)(A) and (B) 47 C.F. R. §51.319(e)(3)(ii)
Shelley W. Padgett	Loop/transport triggers tests; transitional issues	47 C.F. R. §51.319(a)(4)(ii) 47 C.F. R. §51.319(a)(5)(i)(A) and (B) 47 C.F. R. §51.319(a)(6)(i) 47 C.F. R. §51.319(e)(1)(ii) 47 C.F. R. §51.319(e)(2)(i)(A) and (B) 47 C.F. R. §51.319(e)(3)(i)(A) and (B) TRO, ¶ 339 (transitional period relating to loops) TRO, ¶ 417 (transitional period relating to transport)

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PUBLIC VERSION
ON BEHALF OF BELL SOUTH TELECOMMUNICATIONS, INC.
EXECUTIVE SUMMARY OF ANIRUDDHA (ANDY) BANERJEE, Ph.D.
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. P-100 SUB 133S
FEBRUARY 16, 2004

In its *Triennial Review Order*, the Federal Communications Commission ("FCC") has established a national finding of impairment for high capacity loops and transport facilities at various capacity levels. This finding automatically requires incumbent local exchange carriers ("ILECs") to offer those loops and transport facilities on an unbundled basis to requesting competitive local providers ("CLPs"). However, the FCC has also formulated various tests to determine whether exceptions to the automatic unbundling requirement are warranted (particularly at the DS3 and dark fiber capacity levels) at specific customer locations or transport routes. In the "self-provisioning trigger test" for DS3 and dark fiber facilities, the FCC requires a demonstration that a minimum number of CLPs (two for high capacity loops to serve a customer location, three for high capacity transport facilities to serve transport routes) have actually deployed their own facilities to that customer location or transport route. However, even if such a demonstration is not possible, i.e., the trigger is not "facially met," the FCC allows a subsequent analysis—called the "potential deployment test"—with which to determine whether CLPs *could* potentially serve the customer location or transport route using their own facilities. The latter test only requires a showing that it is *financially feasible* for the requisite number of CLPs to deploy their own high capacity facilities.

In my Direct Testimony, I regard the potential deployment test as being complementary to the self-provisioning trigger test. That is, if the *total* number of CLPs that are actually serving, or can potentially serve, a customer location or transport route using their own facilities equals at least two for the customer location or at least three for the transport route, then I regard that as evidence that the FCC's criterion for non-impairment has been met. For

the customer location or route in question, therefore, ILECs should no longer be obliged to provide unbundled access to the DS3 or dark fiber facilities.

My Direct Testimony conducts the potential deployment test for high capacity loops (needed to serve customer locations in the enterprise market) and transport facilities (needed to serve transport routes) within the BellSouth-served areas of North Carolina. To conduct this test, I rely on both revenue and cost information for CLPs (*using actual data whenever possible and estimates otherwise*) and the FCC's instructions to take various real-world factors into account. I demonstrate that it is financially feasible for a CLP to deploy its own high capacity facilities whenever the net present value ("NPV") from doing so is positive over a ten-year recovery period. As explained earlier, for this test to be satisfied, no *actual* CLP presence is required (although there may be some); rather it suffices to show that a CLP *could* deploy its own high capacity facilities on a positive NPV basis.

Based on this framework for the potential deployment test, I find that CLPs in the BellSouth-served areas of North Carolina are not impaired in serving—i.e., can deploy their own high capacity (DS3 and dark fiber) facilities to—139 customer locations (multi-tenant buildings occupied by enterprise market customers) and 6 transport routes. Appendices AXB-2 and AXB-3 attached to my Direct Testimony identify those customer locations and routes, respectively.

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1 BELLSOUTH TELECOMMUNICATIONS, INC.

2 EXECUTIVE SUMMARY OF A. WAYNE GRAY

3 BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

4 DOCKET NO. P-100, SUB 133S

5 FEBRUARY 16, 2004

6

7 My direct testimony is organized into two major parts. First, I describe the network architecture
8 an efficient Competitive Local Provider ("CLP") would utilize to self provide high capacity
9 loops over which it serves its customers. I describe the physical equipment needed as well as the
10 meaning of some of the terms used to describe the levels of capacity required. I also explain the
11 relationship of fiber optic cable to the levels of capacity and the cost to provide the service to an
12 end user building.

13

14 In the second part of my testimony, I explain the high-capacity transport facilities needed by a
15 CLP to self-provide its interoffice routes. I define a "route," describe the network architecture,
16 explain the operational readiness, and clarify the term dark (or "unlit") fiber. I also describe the
17 costs for a CLP to deploy these transport facilities and briefly explain that a CLP does have
18 access to Co-Carrier Cross-Connects ("CCXC") if it desires to use them to connect collocations.

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N.C. Utilities Commission

1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 EXECUTIVE SUMMARY OF SHELLEY W. PADGETT
3 BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
4 DOCKET NO. P-100, SUB 133S
5 FEBRUARY 16, 2004
6

7 My testimony identifies customer locations and routes in BellSouth's territory in North
8 Carolina where the FCC's wholesale competitive facilities and self-provisioning triggers have
9 been met and where this Commission must find that competing local providers (CLPs) are not
10 impaired without access to unbundled high-capacity loops or dedicated transport. The first part
11 of my testimony shows that the triggers have been met in 73 customer locations for DS1 loops,
12 76 customer locations for DS3 loops, and 74 customer locations for dark fiber loops. I first
13 describe the FCC's triggers and then discuss the proper interpretation of the triggers, including
14 the termination point of the loop. I describe BellSouth's methodology in conducting this
15 analysis, including instances in which BellSouth was forced to rely on third-party data to conduct
16 its analysis and how BellSouth determined if a facility was available for wholesale.

17 The second part of my testimony shows that the triggers have been met on 91 routes for
18 DS1 transport, on 97 routes for DS3 transport, and on 89 routes for dark fiber transport. I
19 describe the FCC's triggers and the proper interpretation of the triggers, including
20 misinterpretations of the term "route". I describe BellSouth's methodology in conducting the
21 analysis, including instances in which BellSouth was forced to rely on its own data to conduct its
22 analysis and how BellSouth determined wholesale availability.

23 I then briefly discuss the transition to a market rate environment when the Commission
24 finds that no impairment exists along a particular route or to a specific customer location.

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**BELLSOUTH TELECOMMUNICATIONS, INC.'S
REBUTTAL MATRIX SUMMARY OF POSITIONS**

DOCKET NO. P-100, SUB 133s

TRIENNIAL REVIEW ORDER – HIGH CAPACITY LOOP AND TRANSPORT

Clerk's Office

of the Public Utilities Commission

WITNESS	SUBJECT MATTER OF TESTIMONY	TRO DECISIONAL CRITERIA
Dr. Aniruddha Banerjee	Potential deployment test	47 C.F. R. §51.319(a)(5)(ii) 47 C.F. R. §51.319(a)(6)(ii) 47 C.F. R. §51.319(e)(2)(ii) 47 C.F. R. §51.319(e)(3)(ii)
Shelley W. Padgett	Loop/transport triggers tests; transitional issues	47 C.F. R. §51.319(a)(4)(ii) 47 C.F. R. §51.319(a)(5)(i)(A) and (B) 47 C.F. R. §51.319(a)(6)(i) 47 C.F. R. §51.319(e)(1)(ii) 47 C.F. R. §51.319(e)(2)(i)(A) and (B) 47 C.F. R. §51.319(e)(3)(i)(A) and (B) TRO, ¶ 339 (transitional period relating to loops) TRO, ¶ 417 (transitional period relating to transport)

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1 **ON BEHALF OF BELL SOUTH TELECOMMUNICATIONS, INC.**
2 **EXECUTIVE SUMMARY OF ANIRUDDHA (ANDY) BANERJEE, Ph.D.**
3 **BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**
4 **DOCKET NO. P-100 SUB 133S**
5 **MARCH 1, 2004**
6

7 My Rebuttal Testimony responds to certain economic issues raised in the Direct
8 Testimonies of Gary J. Ball (on behalf of Competitive Carriers of the South) and Jake E.
9 Jennings (on behalf of NewSouth Communications Corp.) that were filed in this proceeding on
10 January 30, 2004. Mr. Ball purports to offer “a workable framework for evaluating ILEC
11 claims of non-impairment” based on tests and analyses established by the Federal
12 Communications Commission (“FCC”) in its *Triennial Review Order*. My Rebuttal Testimony
13 indicates that Mr. Ball’s “framework”—as far as it concerns the conduct of the potential
14 deployment test—is deficient in at least two important respects.

15 First, Mr. Ball adopts a flawed definition of the term “customer location.” If accepted,
16 that definition would have serious adverse consequences for the potential deployment analysis.
17 Second, Mr. Ball dismisses the relevance of the potential deployment test in the event that the
18 self-provisioning trigger test is not satisfied for a given customer location or transport route. In
19 fact, the reasons he constructs for conducting the potential deployment test are themselves
20 flawed and run counter to the FCC’s own instructions about when and how that test should be
21 conducted.

22 My Rebuttal Testimony also points out the apparent omission from Mr. Jennings’
23 testimony of any mention of the potential deployment test which, as indicated by the FCC, has a
24 complementary role to play in any impairment analysis when the self-provisioning and
25 wholesale facilities trigger tests are not fully satisfied.

1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 EXECUTIVE SUMMARY OF SHELLEY W. PADGETT
3 BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
4 DOCKET NO. P-100, SUB 133S
5 MARCH 1, 2004
6

7 My testimony addresses two primary areas of the TRO that Mr. Ball interprets
8 incorrectly: the definition of a route and the definition of a customer location. I also
9 address the transition period proposals made by both Mr. Ball and Mr. Jennings.

10 My testimony addresses Mr. Ball's apparent belief that the FCC doesn't mean
11 what it said when it defined a "route" for purposes of the trigger analysis to include any
12 transmission path between identical end points regardless of any intermediate switches or
13 wire centers. I also address his misinterpretation of the requirement that the carrier be
14 "operationally ready" to provide transport to mean that the carrier is currently providing
15 transport service and the fact that the triggers analysis includes DS3s that are carried on
16 OCn facilities.

17 I also discuss Mr. Ball's invented requirement that the customer location referred
18 to in the FCC's trigger analysis discussion is a single unit within a multi-tenant building.
19 This defies logic as it would effectively negate the stated intentions of the FCC in setting
20 up the triggers in the first place and clearly goes against the FCC's use of the term in its
21 discussion.

22 Lastly, I address the extended transition periods advocated by Mr. Ball and Mr.
23 Jennings. There is no reason to delay the move to a market-based environment when the
24 Commission has found that no impairment exists in a particular building or along a
25 particular route.

COMPETITIVE CARRIERS OF THE SOUTH

(Docket No. P-100, Sub 133s: TRO → High Capacity Loop and Transport)

The NCUC is Providing the Direct and Rebuttal Matrix of Issues and Executive Summaries for the Following CompSouth Witness:

Gary J. Ball – Direct (2/16/04) & Rebuttal (3/2/04)

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Clerk's Office
N.C. Utilities Commission**COMPETITIVE CARRIERS OF THE SOUTH
MATRIX SUMMARY OF POSITIONS
DOCKET NO. P-100, SUB 133s**

Witness	Subject Matter of Testimony	TRO Decisional Criteria
Gary Ball	Loop Triggers	47 C.F.R. § 51.319(a)(4), (5)(i), (6)(i) (and related TRO sections)
	Transport Triggers	47 C.F.R. § 51.319(e)(1), (2)(i), (3)(i) (and related TRO sections)
	Potential deployment test	47 C.F.R. §§ 51.319(a)(6)(ii), 51.319(e)(2)(ii), (3)(ii) (and related TRO sections)
	Transition Issues	TRO ¶¶ 339, 417, 584

**BEFORE THE
NORTH CAROLINA UTILITIES COMMISSION**

**EXECUTIVE SUMMARY OF THE
DIRECT TESTIMONY OF GARY J. BALL ON BEHALF OF
COMPETITIVE CARRIERS OF THE SOUTH**

The Competitive Carriers of the South ("CompSouth") are sponsoring the attached testimony of Gary J. Ball, an independent consultant. CompSouth is a coalition of competitive carriers operating in the Southeast, including in North Carolina, that are committed to the advancement of policies that encourage local and long distance competition in the state.

In the *Triennial Review Order*, the Federal Communications Commission ("FCC") made a finding on a nationwide level that CLECs are impaired without access to unbundled high capacity loops and dedicated transport. The FCC stated that evidence of non-impairment was minimal. The FCC established, however, two triggers – the self-provisioning trigger and the wholesale facilities trigger – pursuant to which the ILECs could challenge the FCC's findings of impairment on a location-specific and route-specific basis (and for each capacity level).

In his testimony, Mr. Ball addresses the appropriate application of these triggers, and explains that the application of the triggers is not a mere counting exercise. Specifically, in part two, Mr. Ball addresses the application of the self-provisioning triggers, and provides the proper framework for interpreting an IELC's claim that the triggers have been met. In part three, Mr. Ball explains the wholesale triggers for high capacity lops and transport, and discusses the requirements necessary to define a carrier as wholesale provider. In doing so, Mr. Ball elaborates on the requirements set forth in those triggers, such as what it means to be

operationally ready, among other issues. Mr. Ball also emphasizes that, consistent with the FCC's rules and orders, the triggers must be applied on a location-specific and route-specific basis and for each capacity level for which the ILEC challenges the national finding of impairment.

In his testimony, Mr. Ball also addresses situations where competitive providers still may be impaired at a particular customer location or on a route even if the trigger has been met. Mr. Ball also discusses the appropriate criteria for potential deployment claims.

Lastly, as explained herein, it is imperative that the Commission adopt an appropriate transition period for any loops or transport routes that it delists. To this end, Mr. Ball states that, given the complexity of the transition issues, that the Commission should consider those issues in a separate proceeding. Mr. Ball also identifies several issues that the Commission should address in developing an appropriate transition period.

PUBLIC DISCLOSURE DOCUMENT

**BEFORE THE
NORTH CAROLINA UTILITIES COMMISSION**

**EXECUTIVE SUMMARY OF THE
REBUTTAL TESTIMONY OF GARY J. BALL ON BEHALF OF
COMPETITIVE CARRIERS OF THE SOUTH**

Docket No. P-100, Sub 133s

The Competitive Carriers of the South ("CompSouth") are sponsoring the attached rebuttal testimony of Gary J. Ball, an independent consultant. In his rebuttal testimony, Mr. Ball responds to BellSouth's direct testimony in this proceeding. Specifically, Mr. Ball addresses the appropriate application of the triggers set forth in the Federal Communications Commission's *Triennial Review Order* ("TRO"), and explains several instances in which BellSouth witness Shelley W. Padgett is improperly applying the triggers. Mr. Ball also addresses BellSouth's claims that the triggers have been satisfied on numerous transport routes and customer locations, and explains why these claims are overstated. In support of his testimony, Mr. Ball provides two exhibits (one for loops and one for transport) illustrating the loops and routes that CLECs indeed serve in North Carolina based on information compiled in CLEC discovery responses.

Mr. Ball also responds to BellSouth's potential deployment analysis, and explains why the analysis is deficient. Lastly, Mr. Ball explains why BellSouth's transition plan is inadequate.

KMC TELECOM III, LLC

(Docket No. P-100, Sub 133s: TRO → High Capacity Loop and Transport)

The NCUC is Providing the Rebuttal Matrix of Issues and Executive Summary for the Following KMC Witness:

Marva Brown Johnson – Rebuttal (3/2/04)

**KMC TELECOM III, LLC
MATRIX SUMMARY OF POSITIONS
DOCKET NO. P-100, SUB 133s**

Witness	Subject Matter of Testimony	TRO Decisional Criteria
Marva Brown Johnson	Loop Triggers	47 C.F.R. § 51.319(a)(4), (5)(i), (6)(i) (and related TRO sections)
	Transport Triggers	47 C.F.R. § 51.319(e)(1), (2)(i), (3)(i) (and related TRO sections)
	Transition Issues	TRO ¶¶ 339, 417, 584

**BEFORE THE
NORTH CAROLINA UTILITIES COMMISSION**

**EXECUTIVE SUMMARY OF THE
REBUTTAL TESTIMONY OF MARVA BROWN JOHNSON ON BEHALF OF
KMC TELECOM III, LLC**

FILED

Docket No. P-100, Sub 133s

MAR 02 2004

^{Clerk's Office}
^{Utilities Commission}
Marva Brown Johnson, Senior Regulatory Counsel for KMC Telecom Holdings, Inc, the parent company of KMC. KMC Telecom III, LLC ("KMC") is sponsoring the attached rebuttal testimony of Ms. Johnson, Senior Regulatory Counsel for KMC Telecom Holdings, Inc, the parent company of KMC. In her rebuttal testimony, Ms. Johnson responds to BellSouth's direct testimony in this proceeding. Specifically, Ms. Johnson addresses BellSouth's claims that KMC is a trigger candidate at certain customer locations and on particular dedicated transport routes. First, Ms. Johnson addresses BellSouth's claim that KMC's transport facilities count toward satisfying the fact based triggers established by the Federal Communications Commission ("FCC") for dedicated transport. In support of her position, Ms. Johnson provides a description of KMC's transport facilities in North Carolina and explains how KMC's transport facilities in North Carolina do not satisfy the fact specific transport triggers established by the FCC for dedicated transport.

NEWSOUTH COMMUNICATIONS, INC.

(Docket No. P-100, Sub 133s: TRO → High Capacity Loop and Transport)

The NCUC is Providing the Direct Matrix of Issues and Executive Summary for the Following NewSouth Witness:

Jake Jennings – Direct (2/20/04)

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**NEWSOUTH COMMUNICATIONS, INC.
MATRIX SUMMARY OF POSITION
DOCKET NO. P-100, SUB 133s**

Witness	Subject Matter of Testimony	TRO Decisional Criteria
Jake Jennings	Decisional criteria: actual deployment triggers, potential deployment, and transitional issues	47 C.F.R. § 51.319(a)(2)(ii), § 51.319(e), and related TRO sections.

**BEFORE THE
NORTH CAROLINA UTILITIES COMMISSION**

**EXECUTIVE SUMMARY OF THE
DIRECT TESTIMONY OF JAKE JENNINGS ON BEHALF OF
NEWSOUTH COMMUNICATIONS, INC.**

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The purpose of my testimony is to provide: (1) an overview of CompSouth and its member companies; (2) an overview of NewSouth and its entry into the local market as a facilities-based CLEC and the benefits of competition that NewSouth, like other facilities-based CLECs, provides to North Carolina customers; (3) a brief overview of the FCC's Triennial Review Order (TRO) and to highlight the importance of continued access to unbundled loops and transport to these companies; and finally, (4) an explanation, from a business perspective, as to why the Commission must provide for a systematic transition program that will allow carriers to transition effectively from the ILECs' unbundled network elements to alternative arrangements if, and when a network element is delisted as a UNE under Section 251(c)(3) of the Telecommunications Act.